

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GEOFFREY B. RHOADS

MAILED

JUL 31 2003

Appeal No. 2002-0057
Application No. 09/186,962

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

ON BRIEF

Before KRASS, DIXON, and BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 2-21. The appellant appeals therefrom under 35 U.S.C. § 134(a). We affirm-in-part.

BACKGROUND

The invention at issue on appeal tracks digitally watermarked data. The ease with which audio, image, and video data can be disseminated via the Internet allows such data to be copied illicitly. (Appeal Br. at 3-4.) Accordingly, the appellant's invention downloads audio, image, and video files from Internet sites and checks the files for any digital watermarks embedded therein. When found, watermarks are

decoded and used to identify the owner of each watermarked file. The owners are then alerted to the use of their files. (Spec., abs.)

A further understanding of the invention can be achieved by reading the following claim.

19. A computer system programmed to receive image, video, or audio files downloaded from the [I]nternet, inspect such files for steganographically¹ embedded data, identify proprietors of files by reference to said steganographically embedded data, and generate report data for relaying to such proprietors.

Claims 2-21 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,721,788 ("Powell") and U.S. Patent No. 4,977,594 ("Shear").

OPINION

Our opinion addresses the claims in the following order:

- claims 2 and 18-20
- claims 3 and 4
- claims 5 and 8
- claim 6
- claims 7 and 9-12
- claims 13-15
- claim 16 and 21
- claim 17.

¹"Steganography refers to hiding a message within other, empirical data."
(Appeal Br. at 3.)

Claims 2 and 18-20

Rather than reiterate the positions of the examiner or the appellant *in toto*, we address five points of contention therebetween. First, the examiner makes the following findings.

With regard to claim 2, Powell describes . . . identifying plural of the obtained files having certain digital watermark data embedded therein, and decoding the digital watermark data there from (refer for example to column 5, line 49 through column 6, line 43); by reference to the decoded digital watermark data, determining proprietors of each of the plural files (refer for example to column 6, line 44 through column 7, line 14). . . .

(Examiner's Answer at 3.) The appellant makes the following argument.

Powell's embodiment cannot perform the process of "identifying plural of the obtained files having certain digital watermark data embedded therein, and decoding the digital watermark data therefrom" without first requiring that each of the original files be identified. Since the auditing method detailed in Powell's illustrated embodiment requires an original image file and its corresponding signature or signatures to be supplied for the auditing process, the auditing process preliminarily identifies the original image and owner of the image before determining whether the subject image was derived from the signed image. In comparison, claim 2 recites: "by reference to said decoded digital watermark data, determining proprietors of each of said plural files".

(Appeal Br. at 9-10.)

"Analysis begins with a key legal question -- *what is the invention claimed?*"

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest

reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000).

Here, claim 2 specifies in pertinent part the following limitations: "[a] method of monitoring . . . comprising: identifying plural of the obtained files having certain digital watermark data embedded therein, and decoding the digital watermark data therefrom; by reference to said decoded digital watermark data, determining proprietors of each of said plural files. . . ." Giving the claim its broadest, reasonable construction, the limitations require identifying files having a digital watermark embedded therein, decoding the watermarks, and using the decoded watermarks to determine the owner of each file.

Having determined what subject matter is being claimed, the next inquiry is whether the subject matter would have been obvious. The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently. . . ." *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697(Fed. Cir. 2001)(citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966); *In re Dembicza*k, 175 F.3d 994, 998, 50 USPQ 1614, 1616 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995)).

Here, Powell generally discloses "encoding a signature into a digital image and auditing a digital subject image to determine if it was derived from the encoded image." Col. 1, ll. 5-8. More specifically, "[t]he subject image is analyzed . . . to extract the signature, if present, and compare it to any signatures stored for that image." Col. 5, ll. 52-54. We find that the reference's extraction of the digital signature teaches the claimed decoding of a digital watermark data embedded in a file. We further find that Powell's determination of whether a subject image has a digital signature embedded therein teaches the claimed identification of files having digital watermarks embedded therein.

Powell further explains that the digital "signature is a pattern of all of the signature points," *id.* at ll. 5-6, of an image. Once extracted from a subject image, "[t]hese signature points are compared to the stored signature points for the signed image." Col. 6, ll. 48-50. "[I]f a statistically significant number of potential signature points in the subject image match corresponding signature points in the signed image, then the subject image is deemed to be derived from the signed image." Col. 5, ll. 6-10. Because the owner of the image from which the subject image was derived is known, the ownership of the subject image is thereby established. In the appellant's words, "Powell notes that 'signatures identify the source of ownership of images' . . ." (Appeal Br. at 10.) Accordingly, we find that Powell's determination of whether the signature of

a subject image matches that of an owned image teaches the claimed use of decoded watermarks to determine ownership of each file.²

Second, the examiner finds, "Shear clearly describes and illustrates a network for communicating the revealed on the plurality of identifiers to obtain contact information corresponding to the identifier (see figure 2-3 and 5)." (Examiner's Answer at 12.) The appellant argues, "Powell does not disclose any method or mechanism for 'sending information relating to results of the foregoing monitoring to said determined proprietors' as claimed." (Appeal Br. at 10.)

"Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." *In re Merck*, 800 F.2d, 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)). "Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in

²Although Powell requires that "a user identifies the original image of which the subject image is suspected of being a duplicate," col. 5, ll. 44-46, the open-ended nature of the claim does not preclude such identification. See *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986) ("a transitional term such as 'comprising' or ... 'which comprises,' does not exclude additional unrecited elements, or steps. . . .").

the art.'" *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1025, 226 USPQ 881, 886-87 (Fed. Cir. 1985) (quoting *Keller*, 642 F.2d at 425, 208 USPQ at 881).

Here, the rejection is based on what the combined teachings of the Powell and Shear would have suggested to those of ordinary skill in the art. We find that Powell teaches that owners of intellectual property "wish to audit usage of their images in print and electronic media. . ." Col. 1, II. 16-17. We also find that Shear sends data reporting the usage of intellectual property to the owners thereof. Specifically, "[t]he present invention also provides a facility for measuring usage of the on-site database for the purpose of billing the user according to the amount he has used the database, and for periodically conveying the measured usage information to the database owner (or his agent)." Col. 3, II. 53-57. The owners employ the usage data recover "[a] return-on-investment commensurate with the market demand for their . . . property." Col. 4, II. 64-65. Because Powell teaches that owners want to audit usage of their intellectual property, and Shear teaches sending usage data to owners so that they can recover a return-on-investment for their intellectual property, we are persuaded that the combined teachings of the Powell and Shear would have suggested sending data relating to results of the foregoing monitoring to owners.

Third, the examiner finds, "Powell describes . . . [that] proprietors of audio or image files are alerted to otherwise unknown distribution of their audio or image properties on computer sites (refer for example to column 1, lines 12-49. . .)." (Examiner's Answer at 3.) The appellant argues, "Powell's embodiment fails to teach a method that alerts proprietors of 'otherwise unknown distribution of their audio or image properties on the Internet.' Again, Powell requires the original image to be identified before the auditing process can begin." (Appeal Br. at 10.)

As explained regarding the first point of contention, Powell identifies and decodes digital signatures in suspected images to learn whether owners' images are being used, e.g., distributed, without their knowledge or authorization. If a signature found in a suspected image matches that of a specific owner, Shear would have suggested alerting the owner of the previously unknown usage as claimed. Although Powell requires that a user identify the original image of which the subject image is suspected of being a duplicate, the open-ended nature of the claim does not preclude such identification. Therefore, we affirm the obviousness rejection of claim 2.

"[T]o assure separate review by the Board of individual claims within each group of claims subject to a common ground of rejection, an appellant's brief to the Board must contain a clear statement for each rejection: (a) asserting that the patentability of

claims within the group of claims subject to this rejection do not stand or fall together, and (b) identifying which individual claim or claims within the group are separately patentable and the reasons why the examiner's rejection should not be sustained." *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) (citing 37 C.F.R. §1.192(c)(7) (2001)). "Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable." 37 C.F.R. § 1.192(c)(7)(2003). "If the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim." *McDaniel*, 293 F.3d at 1383, 63 USPQ2d at 1465.

Here, the appellant fails to provide reasons why claim 18 is separately patentable. To the contrary, he merely points out what the claim covers. (Appeal Br. at 18.) Therefore, claim 18 falls with claim 2, from which it depends, and we affirm the obviousness rejection of claim 18.

Fourth, the appellant argues, "Powell does not teach a computer system programmed to 'identify proprietors of files by reference to said steganographically embedded data' as claimed." (Appeal Br. at 19.) As explained regarding the first point

of contention, Powell uses a digital signature to determine ownership of an image. Because "the changes manifested by the signature are too slight to be visible to the human eye," col. 2, ll. 46-47, the digital signature is steganographic. Furthermore, the reference uses a computer to perform the determination. More specifically, "the signature is extracted, interpreted and verified by a software algorithm," *id.* at ll. 49-50, executing on a computer. Such a determination of ownership teaches the claimed programming of a computer system to identify proprietors of files by reference to steganographically embedded data.

Fifth, the appellant argues, "Powell does not teach a programmed computer system to 'generate report data for relaying to such proprietors.'" (Appeal Br. at 19.) Because Powell teaches that owners want to audit usage of their intellectual property, *supra*, and Shear teaches sending usage data to owners so that they can recover a return-on-investment for their intellectual property, *supra*, we are persuaded that the combined teachings of the Powell and Shear would have suggested the claimed programming of a computer system to generate report data for relaying to proprietors. Therefore, we affirm the obviousness rejection of claims 19 and 20.

Claims 3 and 4

The examiner alleges, "[i]n regard to claim 3, Powell describes decoding the digital watermark data with reference to public key data (refer for example to column 6, lines 18-43). Shear describes the usage of public key data (as clearly illustrated in figure 2)." (Examiner's Answer at 5.) He further alleges, "[w]ith regard to claim 4, Powell describes decoding the digital watermark data with reference to private key data (refer for example to column 6, lines 18-43)." (Examiner's Answer at 5.) The appellant argues, "Shear describes the use of a key for decryption, not digital watermark decoding." (Reply Br. at 2.)

"In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)). "*A prima facie case of obviousness is established when the teachings from the prior art itself would . . . have suggested the claimed subject matter to a person of ordinary skill in the art.*" *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, the passage of Powell cited by the examiner does not describe using key data to decode the reference's digital signature. To the contrary, it merely discloses "normaliz[ing] the brightness, contrast and/or color of the subject image." Col. 6, ll. 18-19.

Although Figure 2 of Shear shows a "Decryption Key/CRC" field, the field is not used to decode digital watermarks. To the contrary, the "[d]ecryption key/error-checking field 108c performs two functions in the preferred embodiment. First, it provides conventional error checking (e.g. CRC or parity) information useful for detecting information reading errors." Col. 10, l. 65 - col. 11, l. 1. "Secondly, the field may provide information needed by sophisticated data decryption schemes to decrypt the information stored in associated field 108b." Col. 11, ll. 1-4. Therefore, we reverse the obviousness rejection of claims 3 and 4.

Claims 5 and 8

The examiner finds, "Powell describes identifying by including performing a domain transformation on data from at least certain of the files, yielding transformed data. . ." (Examiner's Answer at 5.) The appellant argues, "the Powell reference generally do[es] not suggest that a domain transformation is used to identify files that have certain digital watermark data embedded therein as claimed." (Appeal Br. at 12.)

Regarding claim 8, he further argue, "[s]ince Powell does not use a domain transform to identify files with embedded digital watermark data, it is not clear how the claimed use of a one dimensional domain transform for identifying files would be obvious in view of Powell." (*Id.* at 13.) .

"[L]imitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). Here, claim 5 specifies in pertinent part the following limitations: "the identifying includes performing a domain transformation on data from at least certain of said files. . . ." Giving the claim its broadest, reasonable construction, the limitations require using a domain transformation to identify files having digital watermarks embedded therein. The claim does not require, however, that the domain be changed. Claim 8 merely adds that the domain transformation is a one-dimensional transform.

Turning to the prior art, Powell transforms a subject image "to the same size, and same overall brightness, contrast and color profile as the unmodified original image," col. 5, ll. 50-52, as part of extracting and analyzing any digital signature embedded in the subject image. The reference's transformation need not change domains; it is enough that it is performed within some domain to teach the claimed use of a domain

transformation to identify files having digital watermarks embedded therein. Therefore, we affirm the obviousness rejection of claim 5.

Because Powell's transformation operates within a single domain, moreover, we find that it is a one-dimensional transform. Therefore, we affirm the obviousness rejection of claim 8.

Claim 6

The examiner reasons, "Powell clearly describes a filtering operation taking place in column 6, lines 44-53 and since comparison and matching is taking place in Powell the recited claimed language is properly and reasonably met." (Examiner's Answer at 14.) The appellant argues, "[t]his process in Powell does not teach a matched filtering operation of domain transformed data as claimed. Instead, it is a comparison operation." (Appeal Br. at 12.)

"[T]he main purpose of the examination, to which every application is subjected, is to try to make sure that what each claim defines is patentable. *[T]he name of the game is the claim. . . .*" *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) (quoting Giles S. Rich, *The Extent of the Protection and Interpretation of Claims --American Perspectives*, 21 Int'l Rev. Indus. Prop. & Copyright

L. 497, 499, 501 (1990)). Here, claim 6 specifies in pertinent part the following limitations: "the identifying further includes performing a matched filtering operation on said transformed data."

Turning to the prior art, the examiner fails to find that the combination of Powell and Shear would have suggested performing a matched filtering operation on transformed data. To the contrary, the passage of Powell cited by the examiner merely discloses that "[w]hen the subject image is fully normalized, it is preferably compared to the original image." Col. 6, ll. 44-45. Therefore, we reverse the obviousness rejection of claim 6.

Claims 7 and 9-12

"[W]ith regard to claim 7," (Examiner's Answer at 14), the examiner asserts that "[a]lthough [Powell's] domain transformation is not specifically a 2D FFT, 2D FFT transforms are well known and have widely utilized in both the image processing and computer areas since the beginning of computer processing." (*Id.*) He concludes, "to use this particular well known and widely used type of transform would have been obvious to one of ordinary skill in the art at the time the invention was made given the teachings of the Powell system." (*Id.*) The appellant argues, "[s]ince Powell does not use a domain transform to identify files with embedded digital watermark data, it is not

clear how the claimed use of a 2D FFT for identifying files would be obvious in view of Powell." (Appeal Br. at 13.)

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). "[T]he factual inquiry whether to combine references must be thorough and searching." *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). This factual question cannot "be resolved on subjective belief and unknown authority," *In re Lee*, 277 F.3d 1338, 1343-44, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002); "[i]t must be based on objective evidence of record." *Id.* at 1343, 61 USPQ2d at 1434. Although couched concerning combining prior art references, we hold the same requirements apply to modifying such references.

Here, although two-dimensional Fast Fourier Transforms, i.e., "2D FFTs," were well known and widely utilized in image processing and computing, the examiner shows no objective evidence of the desirability of using a 2D FFT to identify files having digital watermarks embedded therein. His broad conclusions that such a use would be

obvious is "not 'evidence.'" *In re Dembicczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993); *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977)). Therefore, we reverse the obviousness rejection of claim 7.

"[W]ith respect to dependent claim 9," (Examiner's Answer at 15), the examiner concludes, "creating a column integrated scan data for at least one oblique scan through an obtained image as called for in the claimed invention was deemed obvious by the examiner as one of ordinary skill in the art would have been led in an obvious fashion to accommodate for scanning the image in the fashion called for in the claimed language." (*Id.*) The appellant argues, "Powell does not teach these elements and Shear adds no pertinent teachings for these elements." (Appeal Br. at 14.)

"It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)). Here, the examiner shows no objective evidence of the desirability of generating column-integrated scan data for at least one oblique scan through an

obtained image. His conclusion that one of ordinary skill in the art would have been led in an obvious fashion to accommodate for scanning in the fashion called for in the claimed language is not evidence. The examiner may be using the claim as a template to piece together the teachings of the prior art. Therefore, we reverse the obviousness rejection of claim 9.

"[W]ith respect to claims 10-12," (Examiner's Answer at 16), the examiner asserts, "[t]hese dependent claims are merely calling for well known computations, i.e. power spectrum, low-pass filtering and spectral characteristics of an image, performed on an image which would be obvious variants of the computations performed by Powell, as these computations would be found in any early image processing book." (*Id.*) The appellant argues, "these conclusions ignore the fact that dependent claims 10-11 further define the 'identifying' process of claim 2, and claim 12 refers to a particular operation used 'to identify the possible presence of digital watermark data therein.'" (Reply Br. at 3.)

As with 2D FFTs, although the computations specified in claims 10-12 may have been well known, the examiner shows no objective evidence of the desirability of using such computations to identifying files having digital watermarks embedded therein. His

broad conclusion that such a use would be an obvious variant is not evidence.

Therefore, we reverse the obviousness rejection of claims 10-12.

Claims 13-15

The examiner finds, "[i]n regard to claim 13, Powell describes screening the obtained files to identify a subset thereof, and undertaking the decoding operation only for files in the subset. . . ." (Examiner's Answer at 6.) The appellant argues, "Powell's illustrated embodiment does not teach these elements and Shear adds no pertinent teachings for these elements. . . ." (Appeal Br. at 16.)

Claim 13 specifies in pertinent part the following limitations: "screening said obtained files to identify a subset thereof, and undertaking the decoding operation only for files in said subset." Giving the claim its broadest, reasonable construction, the limitations require screening files to identify a subset for decoding.

Turning to the prior art, we find that Powell screens images "in print and electronic media," col. 1, ll. 15-16, to identify those "suspected of being a duplicate. . . ." Col. 5, l. 46. Once a subset of suspected files is identified, the images therein are decided to extract any digital signatures therein. *Id.* at ll. 52-54. Therefore, we affirm the obviousness rejection of claim 13.

The appellant fails to provide reasons why claim 14 is separately patentable. To the contrary, he merely reiterates arguments previously addressed to claims 2 and 13. (Appeal Br. at 16.) Therefore, claim 14 falls with claim 13, from which it depends, and we affirm the obviousness rejection of claim 14.

The examiner asserts, "[a]s to claim 15, Powell describes the decoding includes performing at least one statistical analysis. . . ." (Examiner's Answer at 7.) The appellant argues, "[t]here is no teaching of a statistical analysis to decode digital watermark data." (Appeal Br. at 17.)

Turning to the prior art, we find that Powell's auditing includes a statistical analysis. Specifically, "[w]hen auditing a subject image, if a statistically significant number of potential signature points in the subject image match corresponding signature points in the signed image, then the subject image is deemed to be derived from the signed image." Col. 5, ll. 6-10. Therefore, we affirm the obviousness rejection of claim 15.

Claims 16 and 21

The examiner asserts, "[i]n regard to claim 16, Shear provides obtaining includes automatic computer downloading of image or audio files, without specific human

instruction of particular files to be downloaded (refer for example to column 1, lines 33-49)." (Examiner's Answer at 7.) The appellant argues, "[t]his cited passage of Shear refers to on-line public databases. It does not teach the automated downloading of files for use in identifying files having certain digital watermark data embedded therein." (Appeal Br. at 17.)

Claim 16 specifies in pertinent part the following limitations: "automatic computer downloading of image or audio files, without specific human instruction of particular files to be downloaded."

Turning to the prior art, the passage of Shear cited by examiner merely describes the existence of "on-line (public) data base services such as Dialog Information Services, Mead Data Central, Dow Jones Information Services, Source, Compuserve. . ." Col. 1, ll. 42-44. it does not indicate that any of these services automatically download image or audio files, without specific human instruction of particular files to be downloaded. The examiner fails to allege, let alone show, that the addition of Powell cures the aforementioned deficiency of Shear. Therefore, we reverse the obviousness rejection of claim 16.

The examiner also asserts, "[i]n regard to claim 21, Powell describes . . . automatically identifying plural of the obtained files having certain digital watermark data embedded therein, and decoding the digital watermark data there from (refer for example to column 5, line 49 through column 6, line 43). . . ." (Examiner's Answer at 9.) The appellant argues, "Powell's illustrated embodiment does not teach 'automatically' performing the[] claim elements." (Appeal Br. at 21.)

Claim 21 specifies in pertinent part the following limitations: "automatically identifying plural of the obtained files having certain digital watermark data embedded therein, and decoding the digital watermark data therefrom."

Although we have found that Powell identifies subject images having a digital signature present therein, *supra*, the reference does not suggest that the identification be performed automatically. The examiner fails to allege, let alone show, that the addition of Shear cures the aforementioned deficiency of Powell. Therefore, we reverse the obviousness rejection of claim 21.

Claim 17

The examiner asserts, "[w]ith regard to claim 17, Powell describes the decoded watermark data provides a reference to a registry database, and the method further

includes obtaining additional data from the registry database by use of the reference, the additional data identifying the proprietor of the file from which the watermark data was decoded (refer for example to . . . column 5. . .)." (Examiner's Answer at 7.) The appellant argues, "Powell's illustrated embodiment fails to suggest that any data decoded from a watermark in an image provides a reference to a registry database, and further, fails to suggest the use of such a reference to obtain additional data from the registry." (Appeal Br. at 18.)

Turning to the prior art, the appellant admits, "Powell discloses that a signature is stored in a database in which it is associated with the original image. See Powell at col. 5, lines 21-27." (*Id.*) Because the reference's signature represents ownership of an image, we are persuaded that Powell would have suggested using the signature to obtain the identity of the image. Therefore, we affirm the obviousness rejection of claim 17.

CONCLUSION

In summary, the rejection of claims 2, 5, 8, 13-15 and 17-20 under § 103(a) is affirmed. The rejection of claims 3, 4, 6, 7, 9-12, 16, 21 under § 103(a), however, is reversed. "Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R.

§ 1.192(a). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities not included therein are neither before us nor at issue but are considered waived. No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART



ERROL A. KRASS

Administrative Patent Judge



JOSEPH L. DIXON

Administrative Patent Judge

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BOARD OF PATENT
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LANCE LEONARD BARRY

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